Comptroller General
of the United States

Washington, D.C. 20548

McArthur

Decision

Matter of: Landsing Pacific Fund

File: B-237495.2

Date: June 20, 1990

Donald G. Featherstun, Esq., Pettit & Martin, for the protester.
David P. Miller, Esq., Stoel, Rives, Boley, Jones & Grey for Melvin Mark, Jr., an interested party.
Elizabeth L. Kruger, Esq., and S. Lane Tucker, Esq., Office of General Counsel, General Services Administration, for the agency.
C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Allegation of bias in evaluation of firm's proposal is denied where the record shows the agency reasonably downgraded firm's proposal, consistent with evaluation factors, for serious weaknesses regarding the building proposed for lease to the agency.

DECISION

Landsing Pacific Fund protests the award of a contract under solicitation for offers (SFO) No. MOR80344, issued by the General Services Administration (GSA) for lease of office and general purpose space for the U.S. Forest Service and U.S. Army Corps of Engineers in the Portland, Oregon area. The protester contends that the agency unfairly and irrationally evaluated its proposal.

We deny the protest.

The agency issued the solicitation on February 3, 1989, for lease of approximately 280,000 square feet of space in a quality building of sound construction with "a potential for efficient layout" and on-site parking for 78 motor vehicles. This lease is to replace the current lease for the Multnomah Building owned by the protester which expires in April 1991.

The solicitation as amended provided for award of a 10-year firm, fixed-price contract with two 5-year options to that offeror whose proposal was most advantageous to the government, price and other factors considered; cost was weighted equally with the other factors, which included location relative to public transportation, services and amenities, architecture/aesthetics (building design, interior treatment and flexibility/efficiency of building layout), building systems (flexibility and capacity of electrical, mechanical, and communications systems and building security) and capability of offerors (including past performance and ability to meet solicitation schedules).

The solicitation advised potential offerors that the agency required occupancy by April 15, 1991, and required that within 21 days of award, the successful offeror should submit a tentative construction schedule, giving the dates on which the various phases of the construction would be completed, to coincide with the required occupancy date.

The agency received initial proposals on March 17; all offerors except the protester, in whose building the affected agencies were already located, proposed sites with new construction; the protester proposed rehabilitation and expansion of the Multnomah Building. The protester's proposal indicated that during the renovation phase, 70 percent of affected tenants would have to move twice during construction, in addition to encountering the disruption that ongoing construction in other areas would cause. The agency believed the proposal to indicate insufficient concern and planning for this disruption and its possible effect on construction schedules; during discussions, the agency advised the protester that its cursory treatment of this effort caused considerable concern.

The agency received modified proposals on May 25 and best and final offers (BAFO) on August 11. Shortly before award, on October 17, Landsing Pacific Fund filed a protest, based on newspaper stories to the effect that the agency was planning an award to Melvin Mark, Jr.; the protester contended principally that the agency had not applied a preference for historical buildings promised by the solicitation.

The protester initially premised its argument that the agency did not apply the historic preference on its belief that its proposal was technically equivalent to that of Mark, and that price was therefore the most important selection factor. Upon learning, in the course of this

first protest, that the awardee's proposal had received a significantly higher technical rating than did its proposal, the protester challenged the technical evaluation as erroneous. The protester argued that there was no evidence that its proposal did not meet the solicitation specifications and criteria as well as did the proposal that Mark submitted.

In our decision, Landsing Pacific Fund, B-237495, Feb. 22, 1990, 90-1 CPD ¶ 200, we found the record supported the superiority of the Mark proposal. The record showed that Mark received a higher score than Landsing in every technical category, and apart from the factor for location, its technical scores were nearly double those of the protester. Landsing's significantly lower rating reflected the evaluators' concern with the inefficient use of space necessitated by the large vertical columns throughout the protester's building and its outdated heating, ventilation and air conditioning systems.1/ The agency noted that the protester's failure to make adequate plans to minimize the disruption attendant to its proposal to renovate the Multnomah Building aggravated this problem of inefficient space utilization. The protester's proposal also was found generally inferior in its approach to security problems, particularly during the renovation phase; furthermore, the protester's offer of off-site parking, which did not conform to solicitation requirements, resulted in concerns for the safety of personnel proceeding to and from the garage, particularly after hours. The protester's flat wiring system also was considered less flexible and cost efficient than the raised floor system proposed by some offerors, including Mark. The building's lack of an economizer cycle to promote energy efficiency, which the solicitation specifically required, also was a concern. We found the technical evaluation to be reasonable and consistent with the evaluation factors, and concluded that the agency properly could view the Mark proposal as superior to the protester's.

On February 23, after receiving notice of this decision, the agency awarded a contract to Mark. After receiving a debriefing on March 1, Landsing filed this protest.

1/ The agency advises us that its evaluation was based on an upgraded system proposed by the protester, not the existing system as implied by our decision; material submitted by the agency relative to the current protest confirms that the consulting firm hired by the agency found numerous deficiencies in the proposed system.

The protester initially objected to the agency's consideration of the renovation effort in the technical evaluation; the protester asserted that the evaluation should have been based on the quality of the proposed space on the date that the agency took occupancy of the building. Landsing asserted that any issues regarding the renovation effort should have been raised under the existing lease, and that it was unfair to evaluate the protester's preoccupancy effort.

The solicitation provided for the effort to furnish a conforming building to begin before occupancy. For example, the successful offeror was required, within 21 days of award, to submit a tentative construction schedule for delivery of a conforming building on the occupancy date. The SFO specifically identified, as a subfactor, the offerors' ability to meet the solicitation schedules. The record of discussions shows that the protester's ability to provide a completed building by the required occupancy date was of concern to the agency and that the protester was advised of this concern. We find that the agency's consideration of Landsing's proposed renovation schedule was reasonable and consistent with the evaluation criteria.

With regard to the agency's evaluation of this subfactor, the record shows that the agency reasonably downgraded Landsing. The agency found that the protester's heavy reliance upon "cooperation" and "good will" by the agency gave no promise that the proposed relocation of the agency personnel, in order to permit renovation, and the renovation effort, would progress as smoothly as the protester hoped or that the renovation would be completed by the scheduled occupancy date.

The protester next argues that the evaluators' concern regarding its renovation plan created a bias against the protester's proposal that carried over into other areas of the evaluation. In support of this assertion, the protester cites two memoranda prepared by the technical evaluators, which contain extensive criticism of the renovation effort.

First, one of the memoranda from the evaluators cited by the protester specifically states that the matters discussed concerning the disruption from renovation were additional concerns which were not evaluated by the source selection panel. There is also a statement from the source selection evaluation board chairman which confirms this. He states that while the disruptive impact of a renovation was of concern, it was not evaluated except to the extent it had an impact on the ability to meet solicitation schedules.

Furthermore, despite the protester's allegations of bias, Landsing presents nothing to explain the specific, serious weaknesses noted by the evaluators in the protester's inefficient use of space, its inadequate heating, ventilation and air conditioning systems, security problems, proposed off-site parking, its flat wiring system, and the lack of an economizer cycle. The protester has not shown that these weaknesses in its proposal were improperly evaluated. We find no evidence of bias in the agency's concern over these weaknesses in the protester's proposal and therefore no basis to change our conclusion in the prior protest decision that the technical evaluation of Landsing's proposal was reasonable and consistent with the evaluation factors. In all these areas, the Melvin Mark proposal was rated higher and found superior; thus the evaluation results provide a reasonable basis for the award to Melvin Mark as the lowest cost, highest rated proposal.

In its initial protest, Landsing also asserted that the agency had not engaged in meaningful discussions with the protester, identifying six areas in which the protester claimed no discussions were held. While the protester has specifically refused to abandon this argument, it has submitted no evidence to rebut the agency response, which consisted of letters and memoranda provided to the protester during discussions, meeting notes and sworn statements from the evaluators concerning the content of discussions, establishing that each area identified by the protester was in fact discussed extensively with Landsing. In the absence of any evidence to indicate otherwise, we have no basis to find that the agency failed in its obligation to conduct meaningful discussions with the protester.

The protester also contends that the agency misled it concerning the desired delivery schedule and failed to divulge its intention to give a higher technical rating to proposals offering an earlier delivery date. The protester states that in GSA's initial discussions letter it was requested to extend its current lease because GSA believed that its solicitation "delivery schedule is placing a heavy burden on all offerors . . . ." Thus, the protester claims it thought offering to meet the solicitation delivery schedule would entitle it to at least minimum points, instead of no points.

First, the protester has submitted nothing to show that it was actually misled or prejudiced by the agency statement. In its letter, GSA identified the request for the lease extension as "a separate issue." It was the last topic addressed and clearly was unrelated to the issues for discussion concerning Landsing's proposal. The record further indicates that the occupancy date was relaxed from November 1990 to April 1991 by amendment prior to BAFOs, substantially after the extension request. Thus, all offerors were on notice of what Landsing knew earlier by virtue of the lease extension request--that date of occupancy had been postponed. Presumably, all offerors submitted their BAFOs based on this information.

Second, the solicitation specifically provided for a comparative evaluation of proposals, with the offerors' ability to meet the delivery schedule and the documentation supporting the offer as one element of the comparative evaluation. The source selection plan provided for awarding 0-3.3 weighted points, with no points given to proposals lacking documentation to establish that the offeror could meet the required schedule. A maximum score would be awarded where an offer bettered the required schedule and contained solid documentation to support the offer. We therefore find that in awarding no points to the protester, based on the evaluators' uncertainty whether the protester could meet even the required schedule, and awarding points to firms which offered an expedited delivery schedule based on documented evidence of ability to meet the earlier delivery date, the agency evaluated the proposals in a manner consistent with the stated evaluation subfactor. Third, in any event, even if it had received a perfect score under the delivery schedule subfactor which represented 3.3 percent of the total points available, the protester still would not have been in line for award.

The protest is denied.

for James F. Hinchman
General Counsel